Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO R1–24–102 OF 2005
ZAINUN ALI, ABDUL WAHAB PATAIL AND CLEMENT SKINNER JJCA
20 AUGUST 2010

Civil Procedure — Jurisdiction — Court — Civil High Court and Shariah Court — Conflict of jurisdiction — Deceased's wife seeking declaration that deceased was a Hindu at time of his death and his reversion to Islam void — Shariah Court ex parte order declaring deceased a Muslim — Ordered Muslim burial — Whether Shariah Court appropriate court in deciding religious status of a person

Civil Procedure — Parties — Shariah Court — Appearance before Shariah Court — Whether first respondent a legal person — Whether first respondent's appearance before Shariah Court a nullity — Whether person who seeks relief in Shariah Court must a person who is subject to compulsory authority of the Shariah Court

Constitutional Law — Jurisdiction — Islamic religion — Islam revert — Declaration — Deceased, at the time of his death, a Hindu and not a Muslim — Shariah Court ex parte order declaring deceased a Muslim — Ordered Muslim burial — Whether matters within jurisdiction of Shariah Court — Whether deceased's reversion to Islam void — Whether High Court erred in dismissing application — Federal Constitution art 121(1A)

The appellant, the wife of Moorthy a/l Maniam, the deceased, sought a declaration, inter alia, that she was the valid wife to the deceased and that the deceased was a Hindu, following the custom and Hindu religion before his death. It was contended for the applicant that as the deceased was not a Muslim on the date of his death, all the documents of conversion of the deceased to the Islamic religion were void. At the hearing before the High Court, the first respondent produced an ex parte order of the Shariah High Court stating, inter alia, that the deceased was a Muslim and must be buried in accordance with Muslim rights and that the body of the deceased was to be handed over to the first respondent. The High Court granted the appellant's prayer that she was the lawful wife of the deceased. However, the learned judge dismissed the appellant's application for the other prayers, on the grounds that the High Court had no jurisdiction in the matter as it concerned the religion of Islam which was a matter within the jurisdiction of the Shariah Court. The issue

placed before this court was whether the learned High Court judge had erred in dismissing the appellant's application for a declaration that the deceased was a Hindu and not a Muslim upon the production of the order of the Shariah High Court. Hence, the appellant contended, inter alia, as follows: (a) that by making the orders as he did, the learned judge had abrogated the powers of the civil court to the Shariah Court; (b) it was not established that the Shariah High Court had jurisdiction in this case because it was not known whether the deceased in this case was a Muslim or not in the first place; and (c) that the first respondent was not a legal person and its appearance before the Shariah High Court was a nullity.

Held, dismissing the appeal with no order as to cost:

(1) When giving effect to art 121(1A) of the Federal Constitution ('Constitution'), the High Court should first decide whether it has jurisdiction ie, whether the matter before it is a matter in respect of which jurisdiction has been conferred on the Shariah Court. Once the civil High Court determines and decides that the matter is within the jurisdiction of the Shariah Court, the civil High Court should then decline to adjudicate further on the matter. This was clearly the approach taken by the learned High Court judge in this case. It certainly cannot be said that by going through that process and deciding that he had no jurisdiction in matters relating to the deceased's status as a Muslim, the High Court had abrogated its powers to the Shariah Court (see paras 9–11).

(2) A Shariah High Court has the power to hear, decide and to make a declaration as to the status of a person as a Muslim. It is the court of competent jurisdiction for that purpose. Where a question arises whether a person is a Muslim or not, it is not a foregone conclusion that he is a Muslim — but it is our view that the legislature has by art 121(1A) of the Constitution placed the determination of this question in the sole jurisdiction of the Shariah High Court. It is for an obvious and practical reason. The religious authority of a particular religion is better placed to consider and decide whether a person belongs and continues to adhere to that religion (see paras 12–15).

(3) It is not for the civil court to go behind the order of the court of competent jurisdiction to question the merits of the matter decided upon by that court. It is therefore not for the civil court to look behind the order and say whether the Shariah High Court acted correctly or not and to interfere with its decision (see para 13).

(4) Apart from the fact that the appellant had made the first respondent a party in her application, the question whether the first respondent can be party and may appear before the Shariah High Court was a matter within the jurisdiction of the said court. It was not for the civil court to

determine who may or may not appear before the Shariah High Court in matters within its jurisdiction (see para 17).

(5) The fact that a person who seeks relief in a Shariah Court may not be a person who is subject to the compulsive authority of the Shariah Court would not preclude such person from going to the Shariah Court to try to obtain relief. In this case, the appellant was not prevented from applying to the Shariah Court to try to set aside the ex parte order made by it, giving the said court occasion to address the relevant issue concerned and deliver a fair and just decision in accordance with the religion of Islam and Islamic law (see para 21).

[Bahasa Malaysia summary

Perayu, isteri kepada Moorthy a/l Maniam, si mati, memohon deklarasi, antara lain, bahawa dia adalah isteri yang sah kepada si mati dan bahawa si mati adalah seorang Hindu yang mengamalkan agama dan adat Hindu sebelum kematiannya. Dihujahkan oleh pemohon bahawa memandangkan si mati bukan seorang Muslim pada tarikh kematiannya, kesemua dokumen penukaran agama si mati kepada agama Islam adalah tidak sah. Ketika pendengaran di hadapan Mahkamah Tinggi, responden pertama mengemukakan suatu perintah ex parte daripada Mahkamah Tinggi Syariah menyatakan, antara lain, bahawa si mati ialah seorang Muslim dan harus dikebumikan sejajar dengan hak-hak seorang Muslim dan bahawa jenazah si mati hendaklah diserahkan kepada responden pertama. Mahkamah Tinggi membenarkan permohonan bahawa perayu adalah isteri yang sah kepada si mati. Walau bagaimanapun, hakim menolak permohonan perayu bagi lain-lain permohonan, atas alasan bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa dalam perkara tersebut kerana ia berkaitan dengan agama Islam yang merupakan perkara dalam bidang kuasa Mahkamah Syariah. Isu yang dihadapkan di mahkamah ini ialah sama ada hakim Mahkamah Tinggi yang bijaksana telah terkhilaf dalam menolak permohonan perayu bagi suatu deklarasi bahawa si mati adalah seorang Hindu dan bukan beragama Islam berikutan pengeluaran perintah Mahkamah Tinggi Syariah. Dengan itu, perayu berhujah, antara lain, seperti berikut: (a) bahawa dengan mengeluarkan perintah seperti yang dilakukannya, hakim telah membatalkan kuasa mahkamah sivil kepada Mahkamah Syariah; (b) ia tidak dibuktikan bahawa Mahkamah Tinggi Syariah mempunyai bidang kuasa dalam kes ini kerana tidak diketahui sama ada si mati dalam kes ini adalah seorang Islam atau tidak; dan (c) bahawa responden pertama bukan seorang pengamal undang-undang dan kehadirannya di hadapan Mahkamah Tinggi Syariah adalah tidak sah.

Diputuskan, menolak rayuan tanpa perintah terhadap kos:

(1) Apabila menguatkuasakan perkara 121(1A) Perlembagaan Persekutuan (' Perlembagaan'), Mahkamah Tinggi hendaklah terlebih dahulu membuat keputusan sama ada ia mempunyai bidang kuasa iaitu, sama ada perkara

di hadapannya adalah perkara berkenaan bidang kuasa yang diberikan kepada Mahkamah Syariah. Sebaik sahaja Mahkamah Tinggi sivil telah menentukan dan memutuskan bahawa perkara tersebut adalah dalam bidang kuasa Mahkamah Syariah, Mahkamah Tinggi sivil seharusnya menolak untuk selanjutnya mengadili perkara tersebut. Ini jelas pendekatan yang diambil oleh hakim Mahkamah Tinggi yang bijaksana dalam kes ini. Sudah pasti tidak boleh dikatakan bahawa dengan melalui proses tersebut dan memutuskan bahawa beliau tidak mempunyai bidang kuasa dalam perkara-perkara yang berkaitan dengan status si mati sebagai seorang Muslim, Mahkamah Tinggi telah membatalkan kuasanya kepada Mahkamah Syariah (lihat perenggan 9–11).

(2) Mahkamah Tinggi Syariah mempunyai kuasa untuk mendengar, memutuskan dan membuat deklarasi mengenai status seseorang sebagai seorang Muslim. Ia adalah mahkamah yang mempunyai bidang kuasa kompeten bagi tujuan tersebut. Di mana terdapat persoalan yang timbul sama ada seseorang itu Muslim atau tidak, ia bukan perkara yang pasti bahawa dia adalah seorang Islam — tetapi adalah pada pandangan kami bahawa badan perundangan telah, melalui perkara 121(1A) Perlembagaan meletakkan penentuan soalan ini khasnya dalam bidang kuasa Mahkamah Tinggi Syariah. Ia adalah untuk sebab-sebab yang jelas dan praktikal. Pihak berkuasa agama sesuatu agama tertentu adalah lebih baik untuk menimbang dan membuat keputusan sama ada seseorang itu tergolong dan terus berpegang teguh kepada agama tersebut (lihat perenggan 12–15).

(3) Ia bukan bagi mahkamah sivil menyelidiki perintah mahkamah kompeten yang berbidang kuasa untuk mempersoalkan merit-merit perkara yang diputuskan oleh mahkamah tersebut. Oleh itu, ia bukanlah untuk mahkamah sivil menyelidiki di sebalik perintah tersebut dan memutuskan sama ada Mahkamah Tinggi Syariah bertindak betul atau tidak dan untuk ia campur tangan dengan keputusannya (lihat perenggan 13).

(4) Selain daripada fakta bahawa perayu telah menjadikan responden pertama pihak dalam permohonannya, soalan sama ada responden pertama boleh menjadi pihak dan boleh hadir di hadapan Mahkamah Tinggi Syariah adalah suatu perkara yang dalam bidang kuasa mahkamah tersebut. Ia bukan bagi mahkamah sivil untuk memutuskan siapa yang boleh atau tidak, hadir di hadapan Mahkamah Tinggi Syariah dalam perkara-perkara di bawah bidang kuasanya (lihat perenggan 17).

(5) Fakta bahawa orang yang memohon relief di Mahkamah Syariah tidak boleh menjadi orang yang tertakluk kepada kuasa kompulsif Mahkamah Syariah tidak akan menghalang orang tersebut daripada pergi ke Mahkamah Syariah untuk cuba mendapatkan relief. Dalam kes ini, perayu tidak dihalang daripada memohon kepada Mahkamah Syariah

untuk cuba mengetepikan perintah ex parte yang dibuat olehnya, memberikan mahkamah tersebut sebab untuk menangani isu berkaitan dan menyampaikan keputusan yang adil dan saksama selaras dengan agama Islam dan undang-undang Islam (lihat perenggan 21).]

Notes

For cases on court jurisdiction, see 2(2) *Mallal's Digest* (4th Ed 2010 Reissue) paras 4584–4863.

For cases on jurisdiction in general, see 3(2) *Mallal's Digest* (4th Ed 2011 Reissue) paras 2536–2549.

For cases on parties in general, see 2(2) *Mallal's Digest* (4th Ed 2010 Reissue) paras 5512–5761.

Cases referred to

Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1; [1991] 1 CLJ 77 (Rep); [1991] 3 CLJ 2768, SC (refd)

Kamariah bte Ali dan lain-lain lwn Kerajaan Negeri Kelantan, Malaysia dan satu lagi [2002] 3 MLJ 657; [2002] 3 CLJ 766, CA (refd)

Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan & Lain-Lain [2007] 4 MLJ 585; [2007] 3 CLJ 557, FC (refd)

Manokaram a/l Subramaniam v Ranjid Kaur Nata Singh [2009] 1 MLJ 21; [2008] 6 CLJ 209, FC (refd)

Ng Wan Chan v Majlis Ugama Islam Wilayah Persekutuan & Anor [1991] 3 MLJ 174; [1991] 3 CLJ (Rep) 328, HC (not folld)

Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor [1997] 1 MLJ 537; [1997] 1 CLJ Supp 599, HC (refd)

Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489; [1999] 2 CLJ 5, FC (refd)

Legislation referred to

Federal Constitution art 121(1A), List II, Item 1.

Appeal from: Suit No R1-24-102 of 2005 (High Court, Kuala Lumpur)

M Manoharan (A Sivanesan, M Kulasegaran and A Magesan with him) (MA Sivanesan & Co) for the appellant.

Sulaiman bin Abdullah (Fakhrul Azman bin Abu Hasan with him) (Azaine & Fakhrul) for the first respondent.

Mahamad Naser bin Disa (Arik Sanusi bin Yeop Johari, Munahyza bt Mustafa and Andi Razalijaya bin A Dadi with him) (Attorney General's Chambers) for the second and third respondents.

Abdul Wahab Patail JCA (Delivering judgment of the court):

[1] We adjourned this appeal for decision today so that time is given us to fully appreciate the issues raised by all parties. Thus we now give our grounds.

[2] The appellant herein, Kaliammal a/p Sinnasamy ('the appellant') is the wife of Moorthy a/l Maniam deceased ('the deceased') who died on 20 December 2005. On the very next day ie on 21 December 2005, the appellant, applied by originating summons in the High Court in Kuala Lumpur, for the following orders:

(a) a declaration that the applicant is the valid wife to Moorthy a/l Maniam ('the deceased');

(b) a declaration that the deceased is a Hindu and follows the custom and Hindu religion before his death;

(c) a declaration that the deceased is not a Muslim on the date of his death;

(d) a declaration that all documents of conversion of the deceased to the Islamic religion is not valid and void;

(e) an order directing the second respondent and/or the Kuala Lumpur General Hospital by itself and/or by their agent and/or by their workers and/or by their representative to release the deceased's body immediately to the applicant for burial purposes;

(f) an injunction order forbidding the first respondent from taking and claiming the deceased's body in any way whatsoever from the second respondent; and

(g) an interim injunction order forbidding the first respondent from taking and/or claiming the deceased's body from the second respondent and/or to restrain the first respondent from claiming the deceased's body in any way whatsoever from the second respondent until the final decision of the court.

[3] The appellant's application above was heard on 22 December 2005 by the learned High Court judge.

[4] At that hearing before the learned judge in the High Court, the first respondent produced an ex parte order that it had sought and obtained from the Shariah High Court in Kuala Lumpur the previous day. The said order reads:

> Mohammad b. Abdullah @ Moorthy a/l Maniam (the deceased) No. KPT1074385 is a Muslim;

Mohammad b. Abdullah @ Moorthy a/l Maniam No. KP T1074385 is to be buried in accordance with Islamic law;

Persons or authorities having custody of the body of (the deceased) Mohammad b. Abdullah @ Moorthy a/l Maniam No. KP T1074385 Deceased, are required to hand over the body of the deceased to the 1st respondent.

[5] The High Court in Kuala Lumpur granted the appellant's first prayer that she is the lawful wife of the deceased. However the learned judge dismissed the other prayers in the appellant's application, on the grounds that the High Court has no jurisdiction in the matter as it concerned the religion of Islam which are matters within the jurisdiction of the Shariah Court.

[6] Before us, counsel for the appellant, Mr M Manoharan's submission can be summarised mainly as follows, that:

(a) the appellant asks for the matter to be sent back to the High Court to be heard on the merits;

(b) the High Court did not hear the matter on the merits;

(c) the High Court judge had dismissed the matter on grounds that he has no jurisdiction to deal with it;

(d) the learned judge had erred because he had relied on the order of the Shariah Court declaring the deceased to be a Muslim; and

(e) that the first respondent had acted mala fide in seeking the said order ex parte;

the appellant took the position that the Shariah Court was not seised with jurisdiction to determine the religious status of the deceased;

(f) the first respondent had no locus standi to claim the deceased's body;

(g) the appellant wanted the High Court to determine the religious status of the deceased, that he was a Hindu and not a Muslim; where

(h) the appellant produced the deceased's identity document, certificate of marriage on 25 November 1995 and affidavits of the appellant, the affidavit of Chandiran a/l Periasamy, a friend and the affidavit of Tenmuli a/p Maniam, the deceased's sister; which all confirmed that the deceased was at all times a practicing Hindu;

(i) there was no evidence or document produced by the respondents in the High Court to show that the deceased was a Muslim;

(j) the appellant was at all material times a Hindu, a non-Muslim, who has no locus to seek remedy in the Shariah Court to determine the status of her husband;

(k) she has the right to be heard in the civil courts and that the respondents should not ask that she submit to their jurisdiction in the Shariah Court;

(l) although Mejar Shukri bin Hj Yahya said the deceased had converted to the religion of Islam, there is no affidavit from him to that effect;

(m) before he died the deceased was in a coma, but the deceased was claimed by the first respondent, to have converted in November, and that the appellant was informed in December;

(n) the declaration of the Shariah High Court was made after the deceased died; and

(o) the appellant relies heavily on *Ng Wan Chan v Majlis Ugama Islam Wilayah Persekutuan & Anor* [1991] 3 MLJ 174; [1991] 3 CLJ (Rep) 328.

[7] The issue placed before this court is whether the learned High Court judge had erred in dismissing the appellant's application for a declaration that the deceased was a Hindu and not a Muslim upon the production of the order of the Shariah High Court.

[8] Before deciding this issue we wish to address a submission made by the appellant to the effect that by making the orders that he did, the learned judge had abrogated the powers of the civil court to the Shariah Court. We do not agree. The contention of the appellant brings into sharp focus what the civil High Court should do when faced with an application such as this. Does it shy away from dealing with the matter merely on account of the presence of elements pertaining to Islam or Muslims? In our judgment it should not do so.

[9] In our view when giving effect to art 121(1A) the High Court should first decide whether it has jurisdiction ie whether the matter before it is a matter in respect of which jurisdiction has been conferred on the Syariah Court whether by state or federal law.

[10] Once the civil High Court determines and decides that the matter is within the jurisdiction of the Shariah Court, the civil High Court should then decline to adjudicate further on the matter.

[11] This was clearly the approach taken by the learned High Court judge in this case. After setting out the case for the appellant extensively and citing several authorities the learned judge concluded:

> … 18. Di Wilayah Persekutuan terdapat peruntukan yang nyata dalam Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 (Akta 505) mengenai isu pemelukan agama Islam. Bahagian IX Akta 505 menghuraikan

dengan jelas prosedur pemelukan Islam. Oleh itu, sudah tentu mahkamah yang mempunyai bidang kuasa dan kompeten untuk menentukan apa-apa perkara yang timbul di dalam Akta 505, seperti kesahan pemelukan seseorang itu ke agama Islam adalah Mahkamah Syariah dan bukan Mahkamah Sivil. Ini adalah selari dengan perkara 121 (1A) Perlembagaan Persekutuan yang memperuntukkan bahawa Mahkamah Sivil tidak mempunyai bidang kuasa berkenaan dengan apa-apa perkara di mana Mahkamah Syariah mempunyai bidang kuasa yang diberikan di bawah undang-undang bertulis.

19. Saya juga berpendapat bahawa walaupun pemohon melalui affidavit-afidavit yang difailkan cuba menunjukkan bahawa si mati dalam tempoh yang dikatakan si mati telah memeluk agama Islam, telah mengambil bahagian dalam upacara keagamaan Hindu, dan melakukan perkara yang bertentangan dengan agama Islam atau tidak melakukan perkara seperti yang sepatutnya dilakukan oleh orang Islam, tetapi perkara-perkara tersebut adalah persoalan mengenai undang-undang Islam. Sekali lagi bidang kuasa untuk menentukan perkara-perkara seperti itu adalah Mahkamah Syariah dan bukan Mahkamah Sivil.

It certainly cannot be said, as the appellant has tried to say, that by going through that process and deciding that he had no jurisdiction in matters relating to the deceased's status as a Muslim, the High Court had abrogated its powers to the Syariah Court.

[12] Reverting to the issue at hand, a Shariah High Court has the power to hear and decide to make a declaration as to the status of a person as a Muslim. It is the court of competent jurisdiction for that purpose. This is established in *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1; [1991] 1 CLJ 77 (Rep); [1991] 3 CLJ 2768 (SC); *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489; [1999] 2 CLJ 5 (FC); *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan & Lain-Lain* [2007] 4 MLJ 585; [2007] 3 CLJ 557 (FC). In the light of these cases, *Ng Wan Chan* is no longer authority.

[13] As held in *Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor* [1997] 1 MLJ 537; [1997] 1 CLJ Supp 599, (HC) and approved in *Kamariah bte Ali dan lain-lain lwn Kerajaan Negeri Kelantan, Malaysia dan satu lagi* [2002] 3 MLJ 657; [2002] 3 CLJ 766, (CA), it is not for the civil court to go behind that order of the court of competent jurisdiction to question the merits of the matter decided upon by that court. It is therefore not for the civil court to look behind the order and say whether the Shariah High Court acted correctly or not and to interfere with its decision.

[14] It was submitted before us that it is not established that the Shariah High Court had jurisdiction in this case because it is not known whether the deceased in this case was a Muslim or not in the first place.

[15] Where a question arises whether a person is a Muslim or not, it is not a foregone conclusion that he is a Muslim — but it is our view that the legislature has by art 121(1A) of the Federal Constitution of Malaysia placed the determination of this question in the sole jurisdiction of the Shariah High Court. It is for an obvious and practical reason. The religious authority of a particular religion is better placed to consider and decide whether a person belongs and continues to adhere to that religion. We should point out that the judgment of Mohd Yusoff Mohamed SCJ in *Dalip Kaur* stated that En Karpal Singh counsel for the appellant therein conceded at the end of his argument before the Supreme Court that our civil court is not qualified to determine the question in issue, which is, whether a person is a Muslim or not. Indeed if the issue is whether a person belongs to one non-Muslim religion and not another, and the particular religion has no recognised religious authority, a civil court necessarily relies on expert testimony. But in respect of the religion of Islam in Malaysia, no matter how the question is drafted and put, it remains the current law that the question whether a person is a Muslim or not is, as held in the foregoing cases, a question for the Shariah Court to determine.

[16] In the light of art 121(1A) the jurisdiction that remains in the civil court is stated thus by Hashim Yeop Sani CJ (Malaya) in *Dalip Kaur*:

> The new clause 1A of art 121 of Constitution effective from 10 June 1988 has taken away the jurisdiction of civil courts in respect of matters within the jurisdiction of Supreme Courts. But that clause does not take away the jurisdiction of civil court in terms why written laws of States enacted for the administrative of Muslim law.

[17] It was submitted that the first respondent is not a legal person and its appearance before the Shariah High Court is a nullity. Apart from the fact that the appellant had made it a party in her application, whether the first respondent can be party and may appear before the Shariah High Court is a matter within the jurisdiction of the said court. It is not for the civil court to determine who may or may not appear before the Shariah High Court in matters within its jurisdiction.

[18] We are not unmindful of the question of what is the course available to a spouse who, at a time of deep grief is informed that her deceased husband had converted to another religion. For a start it raises question of who is in charge of funeral arrangements. Ultimately it adds complications to rights to his estate. It also raises the question that she needs to verify if it is true he had so converted. In this case it is the Shariah High Court who determines whether the deceased was a Muslim. These questions become emotive because of the assumption that she had no access to that court to be heard on that issue.

[19] The assumption that a non-Muslim is barred from suing in the Shariah

Court, arises from the provision that the Syariah Court has no jurisdiction over non-Muslims. Whether this assumption stands up to scrutiny turns upon Item 1 List II of the Federal Constitution which states as follows:

> … the constitution, organisation and procedure of Syariah Courts which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph….

[20] The question of jurisdiction however relates to the power of the court to exercise compulsive authority over *a person* or on a *subject matter*. (Emphasis added).

[21] The fact that a person who seeks relief in a Shariah Court may not be a person who is subject to the compulsive authority of the Shariah Court would not, in our view, preclude such person from going to the Shariah Court to try to obtain relief. In this case the appellant is not prevented from applying to the Shariah Court to try to set aside the ex parte order made by it, giving the said court occasion to address the relevant issue concerns and deliver a fair and just decision in accordance with the religion of Islam and Islamic law.

[22] To our minds in a dual judicial system anywhere, there will always occur occasions when there appear to be dissonance between the two systems. The civil court seeks to resolve such dissonance where possible by applying an interpretation so that there is no conflict, or to ensure that the grievances be first brought before the court of competent jurisdiction to consider a rule upon it. It is not the proper course to reject the court of competent jurisdiction and instead go to the civil court. Then if the dissonance proves irreconcilable, it is the intent of the Federal Constitution that it is for the Legislature to provide the remedy: see *Manokaram a/l Subramaniam v Ranjid Kaur Nata Singh* [2009] 1 MLJ 21; [2008] 6 CLJ 209 (FC).

[23] For the foregoing reasons, we dismiss this appeal and confirm the decision of the High Court. We make no order as to cost as deposit is refunded to the appellant.

Appeal dismissed with no order as to costs.

Reported by Ashgar Ali Ali Mohamed